

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

In re:

Jeffrey C. Frazier,
Jennifer A. Frazier,

Debtors.

Case No. 08-10094-RGM
Chapter 11

**MOTION OF UNITED STATES TRUSTEE
TO DISMISS CASE WITH PREJUDICE**

Comes Now, W. Clarkson McDow, Jr., United States Trustee, and moves this court to dismiss this case with prejudice to refiling a petition for relief under any chapter of Title 11 U.S.C. § 101 *et. seq.*, the Bankruptcy Code, for a period of time to be determined by the court. In support of this amended motion the following representations are made.

- (1) This court has authority to hear and decide this case. 28 U.S.C. § 1334.
- (2) This is a core proceeding. 28 U.S.C. § 157.

Case History

- (3) On January 9, 2008, the debtors filed a petition for relief under chapter 7 of the Bankruptcy Code.
- (4) On May 5, 2008, the United States Trustee filed a motion to dismiss this case as an abuse under Section 707(b) of the Bankruptcy Code. [document # 37].
- (5) The motion to dismiss this case as an abuse was never fully adjudicated. On

Jack Frankel, Attorney
VSB# 15019
Office of the United States Trustee
115 S. Union Street, Suite 210
Alexandria, VA 22314
(703) 557-7176

December 11, 2008, the debtors converted this case to a case under chapter 11 of the Bankruptcy Code. [document # 68].

Cause Exists To Dismiss This Case

(6) Upon a showing of cause, the court has the authority to dismiss this case. 11 U.S.C. § 1112(b)(1)

(7) Cause exists to dismiss this case with prejudice:

(A) The debtors are required to file operating reports with the court and submit copies to the United States Trustee. LBR 2015-(a)-(1). The debtors have not file monthly operating reports with the court or submitted copies to the United States Trustee. This failure constitutes “cause.” § 1112(b)(4)(F) “unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;” § 1112(b)(4)(H) “failure timely to provide information ... requested by the United States trustee...”

(B) The debtors have not filed a disclosure statement and plan of reorganization. Under the circumstances of this case, the failure to file a disclosure statement and plan after a being under the protection of the bankruptcy laws for approximately a year and a half constitutes cause to dismiss this case because it is an unreasonable delay that is prejudicial to the creditors and estate.

(C) The debtors omitted from their initially filed Schedule B-Personal Property that they were entitled to tax refunds in the amount of \$28,000. [document # 1, page 12]. The debtors filed an amended Schedule B almost a year later disclosing they were entitled to the \$28,000 tax refund. [document # 72, page 2]. This is a material omission and supports dismissing this case with prejudice.

(7) The United States Trustee is not aware of any unusual circumstances that would justify not dismissing this case.

Wherefore the United States Trustee moves the court:

1. To dismiss this case with prejudice.
2. To grant such further relief as the court deems just and fair.

June 14, 2009:

W. Clarkson McDow, Jr.
United States Trustee

/s/ Jack Frankel
Jack Frankel, Attorney
Office of United States Trustee
115 South Union Street
Alexandria, VA 22314
(703) 557-7229

Certificate of Service

I hereby certify that on the 14th day of June, 2009, I mailed, United States mail, first class, postage fully prepaid, with return address on envelope, a copy of this motion to dismiss and notice of motion and hearing to:

Jeffrey C. Frazier Jennifer A. Frazier 25726 Meadowhouse Court South Riding, VA 20152	Gregory H. Counts, Esq. Tyler, Bartl, Ramsdell and Counts 700 South Washington Street, Suite 216 Alexandria, VA 22314
--	--

/s/ Jack Frankel
Jack Frankel